

May 18, 2018

Exhibit 14

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

In the matter of the amendment of)	REGULATORY DIVISION
ARM 38.5.2501, 38.5.2527, and)	
38.5.2528, pertaining to small water)	DOCKET NO. N2017.9.76
utility rules)	

**COMMENTS OF THE MONTANA CONSUMER COUNSEL
IN SUPPORT OF PROPOSED AMENDMENTS
TO SMALL WATER UTILITY RULES**

On September 25, 2017, the Montana Consumer Counsel ("MCC") petitioned the Montana Public Service Commission ("Commission") to amend or repeal Mont. Admin. R. 38.5.2527 and 38.5.2528 ("Standard Rate Rules") pursuant to § 2-4-315, MCA, which requires an agency to either initiate a rulemaking or deny the petition within 60 days. *Id.* On November 22, 2017, the Commission issued a *Notice of Commission Action* ("Notice"), stating that it had "voted to accept the MCC's petition to amend the small water Standard Rate Rules and to initiate rulemaking proceedings in accordance with the Montana Administrative Procedures Act." Notice p. 1 (citing § 2-4-315, MCA). However, the Commission "disagree[d] with the MCC that the Standard Rate Rules should be removed in their entirety," and stated, in part:

The Standard Rate Rules should at least exist for new utilities that lack sufficient financial data to adequately determine rates, however, this petition presents an opportunity to determine whether the Standard

Rate Rules are appropriate for utilities that have sufficient financial information upon which to determine rates.

The Commission tends to agree with the MCC that some Optional Minimum Filing Requirements for Small Water and Sewer Utilities could make the process more efficient.

Id. The Notice stated that Commission staff would develop proposed rules that “may include alternate rules proposed by the Commission” for the rulemaking process, which the Commission said it would initiate by January 16, 2018.

On January 16, 2018, the Commission issued a *Notice of Public Hearing on Proposed Amendment* (“Rulemaking Notice”) that included the MCC’s proposal, as well as a second proposal that would maintain existing standard rates and add a second standard rate option. 2 Mont. Admin. Reg. 166, 170 (Jan. 26, 2018). On March 13, 2018, the Commission held a public hearing on the Rulemaking Notice.

I. Background

Standard rates were never intended to be an automatic entitlement. When it adopted the current standard rate rules, the Commission recognized that “the burden of proof is always on the utility in a rate proceeding.” 4 Mont. Admin. Reg. 399 (Feb. 27, 2014). It also recognized that regulatory costs could still exist if a request is challenged:

If the proposed rules are adopted and if a small water or sewer utility takes advantage of the new regulatory options *and its election of one of the simplified methods is not challenged*, it will not be necessary for the utility to engage professional services to support the ratemaking process.

17 Mont. Admin. Reg. 1590 (Sept. 5, 2013) (emphasis added). An October 1, 2014 letter to small water consumers from former Commissioner Bill Gallagher, attached as Exhibit A, underscores how providing an opportunity to challenge proposed rate increases should be considered essential to any form of simplified regulatory treatment.

In practice, however, the Commission has increasingly applied the standard rates as an automatic entitlement, even when the MCC has opposed the requested rate increase. Recent decisions to grant the full standard rate – despite MCC’s lower rate recommendation – were not supported by any findings of fact based on the evidence in those cases. The Commission has also extended standard rates beyond their three-year expiration without any consideration of relevant financial data, or even whether such data has been provided. *See* Dkts. D2010.6.60, D2014.6.57, N2014.7.66, N2014.8.77.

Standard rates have also created a preserve incentive for sales and transfers of public utilities that would not otherwise occur, at a price that would not otherwise be paid. *See* Dkts. D2016.4.35, D2016.9.70, D2017.1.5. Such transactions must be in the public interest and not harm ratepayers. Standard rates incent buyers to purchase utilities not based on book value, but rather a price that can be supported by the income stream expected under standard rates. Such value is created purely by administrative rule, and to the extent it is embedded in a standard rate request, ratepayers are harmed.

Prior to standard rates, the Commission routinely issued interim orders granting whatever rates were proposed on an interim basis. While not set forth in rules, this process of establishing “initial rates” pending one or two years of operating information was well established in Commission decisions.¹ The MCC has historically been very sensitive to regulatory costs, strived to minimize such costs, and rarely (if ever) challenged the recovery of such costs by small water and sewer utilities. The MCC thus supports efforts to streamline rate review for small water utilities, but not at the expense of backstop regulatory protections for consumers.

II. The Commission should replace standard rates with “initial rates.”

Despite laudable motives for adopting standard rates, it has become increasingly clear that they harm ratepayers and run afoul of statutory protections. Standard rates were established to reduce the regulatory cost to ratepayers, but they have not reduced ratepayer’s actual rates. On the contrary, they have only resulted in rate increases. Allowing utilities to choose between standard rates and other ratemaking methodologies (i.e., higher rates) creates this inherent asymmetry.²

¹ See e.g. Interim Order 6485, Dkt. D2003.2.24 (Mar. 11, 2003); Pre-Notice Interim Order 6570, Dkt. D2004.4.61 (May 25, 2004); Pre-Notice Interim Order 6573, Dkt. D2004.5.74 (June 1, 2004); Pre-Notice Interim Order 6651, Dkt. D2004.8.129 (June 2, 2005).

² For any utility that could collect additional revenues through standard rates, an incentive exists to seek standard rates. For any utility that can justify higher rates, an incentive exists to ask for more through the operating ratio methodology or a rate case.

The stated purposes of standard rates – to reduce regulatory costs, gather information, and encourage utilities to comply with their regulatory obligations – would be better served through a standardized process for “initial rates.” In its *Petition to Amend ARM 38.5.2527 and 38.5.2528*, the MCC proposed such a streamlined ratemaking process, premised on utilities providing a certain threshold of basic utility information up front. For companies already providing service, such information should be available. Setting initial rates based on meeting certain minimum filing requirements better balances the goals of reducing regulatory costs and ensuring just and reasonable rates.

III. Standard rates as they currently exist are unlawful and unnecessary.

The Commission must ensure that public utility rates are just and reasonable, that its ratemaking decisions conform to the procedural requirements of the Montana Administrative Procedures Act (“MAPA”), and that the MCC’s right to participate is protected.³ Every utility’s costs, revenues and circumstances are different, and no rulemaking process can account for these differences and ensure that rates are just and reasonable. §§ 69-3-102, 69-3-201, MCA. For good reason, ratemaking and price fixing must be accomplished through contested case proceedings. §§ 2-4-102(4), 2-4-623, 69-3-303, MCA. Captive consumers are

³ For a fuller discussion of these legal issues, the MCC incorporates by reference its *Petition to Amend ARM 38.5.2527 and 38.5.2528*, Docket N2017.9.76 (Sept. 25, 2017), and its *Response to Holmberg Village Water Company’s Motion for Reconsideration of Interim Order 7509a*, Docket D2016.4.35 (May 26, 2017).

entitled to a meaningful opportunity to challenge utility rates increases. §§ 2-4-612, 69-2-201, MCA.

Although standard rates have been viewed as a means of encouraging utilities to comply with tariff and annual reporting requirements, there are better ways to bring utilities into regulatory compliance than by offering standard rates as an enticement. Utilities are required to file schedules “showing all rates, tolls, and charges,” as well as “a full annual report of the business of the utility.” §§ 69-3-301, 69-3-203, MCA. Regardless of whether they have complied with these obligations, however, public utilities are subject to the Commission’s regulatory authority.

This regulatory authority includes “full power of supervision, regulation, and control,” and an ongoing right to examine utilities’ “books, accounts, records, and papers.” §§ 69-3-102, 69-3-202(5), MCA. “Upon a complaint made against any public utility,” the Commission must “make such investigation as it may deem necessary,” and may substitute new rates that it deems “are just and reasonable” §§ 69-3-321, 69-3-330, MCA. The Commission may “at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services,” and “order such changes as may be just and reasonable, the same as if a formal complaint had been made.” § 69-3-324, MCA. Given these protections, an incentive financed by ratepayers should not be necessary for utilities to comply with their statutory obligations.

IV. The Commission should not adopt Option 2 without amendments.

The alternate rules in the Rulemaking Notice (“Option 2”) include several significant improvements to the existing standard rate rules. For example, the MCC supports establishing minimum filing requirements, as well as the language clarifying that applications for simplified regulatory treatment are subject to Commission approval, that initial rates are interim and subject to refund or surcharge, and that approval may be revoked if the utility is not in compliance with annual reporting requirements. Should the Commission decline to adopt the MCC’s primary recommendation (“Option 1”), however, several amendments should be made before proceeding with Option 2. These amendments are attached as Exhibit B, and are discussed below.

First, the Commission should clarify that it will prioritize “enforcement of tariff and reporting requirements” based on complaints received from consumers or the MCC. The burden of “supervision of management and rate regulation” should not be shifted to consumers through a complaint process, and these concepts of ratemaking and oversight should apply anytime a utility requests new rates. Rather than encompassing these concepts, Admin. Mont. R. 38.5.2501(3) should focus on enforcement of tariff and reporting requirements, which seem to be the driving concerns involving utility noncompliance. *See* §§ 69-3-203, 69-3-301, MCA.

Second, the Commission should combine the standard rate option with the option of the “Montana Department of Natural Resources and Conservation’s most recent water and sewer rate study’s monthly water average and/or monthly

wastewater average” (“DNRC average rate”). Specifically, the standard rate should simply become the DNRC average rate, and the additional protections proposed for standard rates – minimum filing requirements, interim status, and possibility of revocation – should apply to this DNRC average rate option. Importantly, unless the Commission applies these protections to the DNRC average rate option, then all the legal and practical problems associated with standard rates would persist.

Also, to mitigate the problem of rate circularity (i.e., that the average will increase as more utilities increase their rates to the average, with no corresponding decreases), the overall DNRC average “for all communities in Montana” should be used rather than the “average for populations less than 500.” The overall DNRC average rate is a more appropriate target for initial rates, and utilities can always ask for more (i.e., through the operating ratio method or a rate case) if the overall DNRC average rate is insufficient. The *2016 Montana Statewide Water and Wastewater Rate Study* showed an overall average water rate of \$45.90 per month (lower than current standard rates), and a sewer rate of \$33.05 (higher than current standard rates).

Third, the Commission should add two minimum filing requirements to Option 2. Information about original cost and depreciation should be provided “if available,” because such information may be available and useful in some cases; the proposed language acknowledges that it will not be available in all cases. Also, annual consumption information will be necessary to convert the flat DNRC average rate into flat and metered rates for utilities offering metered services.

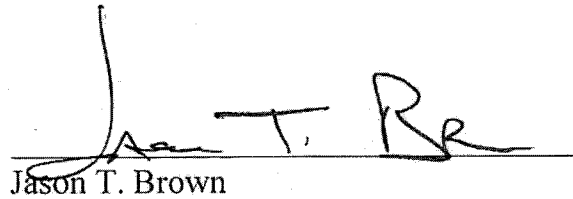
Fourth, the Commission should require utilities to provide advance notice to the Commission, the MCC and consumers before they may apply for DNRC average rates. There is no good reason to exclude MCC from this notice requirement, and requiring advance notice creates a more meaningful opportunity to participate.

Fifth, the Commission should not allow extensions of the DNRC average rate after three years. Allowing extensions delays utilities' transition to full compliance and reduces their incentive to provide important information. In practice, the Commission has not denied any requests for extensions of standard rates. Because they are not defined, the "limited circumstances" contemplated in Option 2 are likely to become a loophole that creates needless controversy and delays approval of final rates.

Finally, the Commission should replace the term "standard rates" with "initial rates" to clarify the purpose of allowing DNRC average rates, which is to enable compliance with regulatory requirements as more information is gathered and provided. This terminology better reflects the mechanics and goals of this simplified regulatory treatment option.

With these amendments, "Option 2" would represent a major improvement over the *status quo*, and better align the goals of ratemaking efficiency, utility compliance, and backstop consumer protections. The MCC appreciates the Commission's consideration of its proposal, as well as its amendments to Option 2.

Respectfully submitted March 23, 2018.

A handwritten signature in black ink, appearing to read "Jason T. Brown", is written over a horizontal line.

Jason T. Brown

Attorney

Montana Consumer Counsel

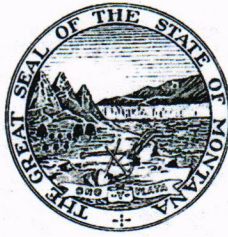
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October 1, 2014

Re: North Star PUD – Docket No. D2010.6.60

Dear North Star Customer:

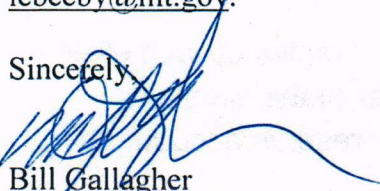
North Star Planned Unit Development has been operating since 2012 under interim, temporary rates approved by the Public Service Commission. On June 4, 2014, North Star applied to the PSC to implement the PSC's standard rates for water and sewer service. (A copy of the PSC's administrative rules regarding standard rates and other simplified regulatory options for small water and sewer utilities is enclosed for your information.) You should have received a letter from North Star in mid-June to notify you of the proposed rate changes. (A copy of North Star's letter to customers is also enclosed.) On September 11, 2014, North Star completed its PSC application by submitting its affidavit of mailing notice to its customers.

Prior to the PSC taking action to approve the implementation of the standard rates as requested by North Star, I invite North Star's customers to comment on the application by submitting your written comments either by mail or electronically on our website. In addition, the PSC welcomes public comment in person at all of its weekly business meetings. The PSC will act on the North Star application at its regularly scheduled business meeting on October 28. But, have scheduled business meetings at which you may comment on October 2nd, 7th, 16th, and 21st. Each starting at 9:30 AM in the Bollinger Room of our offices at 1701 Prospect with opportunity for public comment at the front of the agenda.

You are also welcome to send any written comments by mail to the Montana PSC, P.O. Box 202601, Helena, MT 59620-2601. Electronic comments can be submitted via our web site at <http://psc.mt.gov/Consumers/comments/>. Regular business meetings are noticed on our website at <http://psc.mt.gov/agendas.asp>.

If you have any questions, please contact Leroy Beeby at 406-444-6188 or e-mail him at lebeeby@mt.gov.

Sincerely,



Bill Gallagher
Chairman

38.5.2501 GENERAL RULES FOR PRIVATELY OWNED WATER UTILITIES

(1) and (2) remain the same

(3) All privately owned water utilities must have commission-approved tariffs filed with the commission, pursuant to Title 69, MCA, and its corresponding administrative rules, including penalties as provided by statute. The commission will prioritize ~~supervision of management and rate regulation of enforcement of tariff and reporting requirements applicable to~~ privately owned water utilities based upon complaints received from consumers. AUTH: 69-3-102, MCA IMP: 69-3-102, MCA.

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) ~~Two~~

~~Three~~ Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to establish or propose changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) filing a rate application for the adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average rate and/or monthly wastewater average rate ~~commission-approved standard rate tariff to establish rates as~~ in accordance with the minimum filing requirements described in ARM 38.5.2528; or

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529; ~~or~~

~~(c) filing a rate application requesting adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average and/or monthly wastewater average for populations less than 500.~~

(2) A small water or sewer utility is not required to establish or change its rates using elect any of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the ~~two three two~~ simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

(5) The commission may find good cause to waive any privately owned water utility rules, if ~~the utility~~ a party successfully petitions the commission for a waiver of rules pursuant to ARM 38.2.305.

38.5.2528 ~~STANDARD-INITIAL~~ RATE TARIFF (1) A small water or sewer utility may file an application to establish its initial commission-approved rates based on the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average rate and/or monthly wastewater average rate~~standard rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates.~~ If the utility has previously had rates on file with the commission it is not eligible for these initial standard rates. The ~~standard~~ rate application and tariff forms to be submitted for commission approval by the utility review are available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov. The rate application shall contain, at a minimum, the following information:

(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;

(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;

(d) The total number of potential water service connections and meters and potential sewer service connections and meters;

(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) The rates proposed for each type of service;

(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

(j) A list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;

(k) A list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;

(l) A copy of the most recent annual report filed with the commission;

(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations;

(n) if available, the original cost of utility plant in service, an accounting of any capital improvements made, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts;

(o) for metered utilities, annual consumption information for the preceding two years; and

(p) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

~~(2) The standard rates for small water and sewer utilities that choose apply to establish rates using this simplified regulatory option are:~~

~~(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~

~~(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~

~~(c) a flat charge of \$30 per connection per month for a small sewer utility.~~

(3) Other terms and conditions of service are those provided in the commission's ~~standard rate~~ tariff forms and in ARM 38.5.2501, et seq.

~~(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq.~~

(4) A small water or sewer utility that intends files an application to adopt these ~~initial standard~~ rates must notify the commission, the Montana Consumer Counsel, and every customer in writing of its intention ~~at least 30 days in advance of the proposed effective date of the standard rate tariff adoption~~ within at least ten days in advance of filing its application with the commission.

(65) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the standard proposed rates, provide information that shows the typical bill impact of the application of the standard proposed rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.

(76) The ~~commission notification~~ rate application must include the proposed standard rates in tariff form, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its ~~commission notification~~ rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(87) The commission will ~~act on the request to adopt the standard rate tariff~~ determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (n) no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements it will notice it to the public for comment or protest. If either the Montana Consumer Counsel or 20 percent of the utility's customers protest the application, the commission will make a decision on the application following any additional process established by the commission.

(98) The ~~A standard initial~~ rate tariff adopted by a small water or sewer utility application approved by the commission expires three calendar years after its initial effective date, unless the commission approves an extension. Extensions will only be granted in limited circumstances. The three-year calendar time period begins at the time the commission grants any portion of the standard initial rate, even if the rate is implemented in phases. Standard-Initial rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., a rate application for the adoption of the Montana Department of Natural Resources and Conservation's average rates, or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. At least three months prior to the expiration of the standard rate tariff initial rates, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.

(109) ~~The commission may deny the adoption of the standard rate tariff by will not grant standard-initial rates to a small water or sewer utility if the utility that has been operating pursuant to commission-approved rates and the commission determines it would be unjust and unreasonable to approve adoption of the standard rate tariff for the utility previously. The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest, that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.~~

(10) A small water or sewer utility's standard rate tariffinitial rate may be revoked if the utility is not in compliance with the Commission's annual report requirement.

(11) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.